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REMARKS

Claims 1-56 are currently pending in the subject application and are presently under consideration. Claims 20-42 and 48-56 have been withdrawn pursuant to a restriction requirement and are hereby cancelled. Applicant's representative reserves the right to rejoin these claims at a later date. Claims 2-19 and 43-47 have been amended herein. Claims 57-69 have been newly added to emphasize various novel aspects of the subject invention. A complete listing of the claims showing changes made can be found at pages 2-7 of this Reply. Favorable reconsideration of the subject patent application is respectfully requested in view of the comments and amendments herein.

I. Rejection of Claims 1, 3-7, 11-15, 16 and 19 Under 35 U.S.C. §102(e)

Claims 1, 3-7, 11-15, 16 and 19 stand rejected under 35 U.S.C. §102(e) as being anticipated by Pallakoff (US 6,269,343). It is respectfully requested that the rejection be withdrawn for at least the following reasons. Pallakoff does not disclose, teach or suggest each and every element recited in the subject claims.

A single prior art reference anticipates a patent claim only if it expressly or inherently describes each and every limitation set forth in the patent claim. *Trintec Industries, Inc. v. Top-U.S.A. Corp.*, 295 F.3d 1292, 63 USPQ2d 1597 (Fed. Cir. 2002); *See Verdegaa Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). The identical invention must be shown in as complete detail as is contained in the ... claim. *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

The claimed invention relates to a system of determining product pricing using product aggregation methodologies. In more detail, amended independent claim 1 recites a logistics component that determines a shipping price for the product for a subset of the plurality of buyers, *the shipping price being determined at least in part upon the subset of buyers sharing a shipping method*. Pallakoff is silent with regard to such claim features.

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Pallakoff instead relates to electronic commerce and more particularly marketing products and services utilizing the internet. Nowhere does Pallakoff disclose or suggest *the shipping price being determined at least in part upon the subset of buyers sharing a shipping method* as set forth in the subject claims. Rather, Pallakoff discloses aggregating demand and providing demand based pricing. (See col. 1, ll. 53-55). Although Pallakoff discloses a determination of product pricing, nowhere does Pallakoff disclose a system relating to shipping price, much less determining shipping price based at least in part on a subset of buyers sharing a shipping method.

In the Office Action dated July 29, 2005, the Examiner asserts that Pallakoff calculated the lowest price for customers (including shipping prices). (See pg. 3). Applicant's representative respectfully disagrees with such a contention. The cited passages refer to electronically offering a product for sale, receiving orders for the product, and deciding on a price. However, as discussed *supra*, Pallakoff is silent with regard to determination of a *shipping price*. As such, it seems that the Examiner is failing to afford *shipping price* patentable weight.

Additionally, Pallakoff does not teach or suggest *a users and groups component that manages information of a plurality of users of the system* as recited in dependent claim 3. The Examiner contends that such claimed elements are disclosed in Fig. 1, refs. 14a-14d. Applicant's representative respectfully disagrees with such a contention. The cited references and accompanying text disclose a variety of client terminals that are used to place orders over a communication medium. Such terminals include computers, laptops, thin-clients, WebTV's, Interactive TV's, PDA's, and Information Appliances. (See col. 3, ll. 5-8). Although the cited passages disclose a multitude of devices that can be used to place an order, they are silent with regard to a component that *manages information of a plurality of users* as recited in the subject claim.

Furthermore, Pallakoff does not disclose or suggest *a terms and conditions component that manages agreements between users of the system as to business terms and conditions* as recited in dependent claim 6. The Examiner contends that such claimed aspects are disclosed by Pallakoff at col. 1, ll. 55-58 and col. 12, ll. 5-10. Applicant's representative respectfully disagrees with such a contention. In more detail, the cited passage at col. 1, ll. 55-58 relates to *conditional* offers. The cited passage at col.

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12, ll. 5-10 establishes the definition of system operator and reads "The *term* 'system operator' as used herein does not necessarily refer to an individual. The *term* refers to..." While Pallakoff uses the words "term" and "condition" in its specification, the cited passages clearly do not relate to a terms and conditions component.

Still further yet, Pallakoff fails to teach or suggest an agent component that *determines details that at least one of the plurality of sellers should include in an offer to achieve maximum profits and automatically creates an order for at least one of a plurality of products for at least one of the plurality of buyers* as recited in dependent claims 16 and 19 respectively. The Examiner contends that such claimed aspects are disclosed at col. 11, ll. 44-46, at Fig. 1, ref. 93, and at Fig. 3, ref. 37. Applicant's representative respectfully disagrees. The cited passage at col. 11, ll. 44-46 relates to allowing a buyer to express a conditional interest in a product. The cited figures relate to a system controller (*see* Fig. 1, ref. 93—although Fig. 1 does not contain ref. 93, Applicant's representative believes the Examiner intended to identify Fig. 1, ref. 13) and a methodology for accepting an offer (*see* Fig. 3, ref. 37). Thus, while Pallakoff discloses the ability to buy and sell products on the Internet and express conditional product interest, nowhere does it disclose the novel functionality to improve the shopping process as recited by the subject claims. Accordingly, the rejection should be withdrawn.

In view of at least the foregoing, it is readily apparent that Pallakoff fails to disclose, teach or suggest each and every element of the invention as set forth in independent claim 1 (as well as claims 3-7, 11-15, 16, and 19 that depend thereon). Accordingly, this rejection should be withdrawn.

II. Rejection of Claims 2, 8-10, 15, 17-18, 43-47 Under 35 U.S.C. §103(a)

Claims 2, 8-10, 15, 17-18, 43-47 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Pallakoff (US 6,269,343). It is respectfully requested that the rejection be withdrawn for at least the following reasons. The cited reference fails to teach or suggest each and every feature of the subject invention as claimed.

To reject claims in an application under §103, an examiner must establish a *prima facie* case of obviousness. A *prima facie* case of obviousness is established by a showing of

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three basic criteria. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. *Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations.* See MPEP §706.02(j). (Emphasis added). The teaching or suggestion to make the claimed combination and the reasonable expectation of success *must both be found in the prior art* and not based on applicant's disclosure. See *In re Vaech*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). (Emphasis added).

In more detail, independent claim 43 has been amended to recite *a computer-implemented logistics component that determines a shipping price for a good based on aggregative pricing for a plurality of buyers, the shipping price being determined at least in part upon the plurality of buyers sharing a shipping method.* As discussed *supra*, Pallakoff fails to teach or suggest shipping price, much less factors relating to determining a shipping price. Accordingly, the rejection should be withdrawn.

Claims 2, 8-10, 15 and 17-18 depend directly or indirectly from claim 1. Accordingly, these claims are allowable for at least the same reasons as claim 1. Furthermore, the subject matter recited by claims 2, 8-10, 15 and 17-18 provides a separate basis for patentability over and above that of independent claim 1. For instance, Pallakoff fails to make obvious *a component that utilizes historical data to determine a pricing strategy for at least one of a plurality of products with respect to at least one of the plurality of buyers* as recited in dependent claim 15. Pallakoff fails to disclose such claimed elements. To make up for the deficiencies of Pallakoff, the Examiner asserts that it is well known to use telephone numbers to trace a consumer's history and also to distribute customer coupons. Applicant's representative respectfully disagrees that use of telephone numbers and coupons determines a product pricing strategy. Specifically, there is no nexus between distributing coupons and determining a pricing strategy. Merely providing a coupon does not change the pricing strategy for a particular product.

Furthermore, Pallakoff fails to teach or suggest a component *that determines a production schedule for at least one of the plurality of sellers* as recited in dependent

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claim 17. The Examiner states that detail[ed] information about a production schedule has been informed to buyers for anticipation/preparation of their own events. (*See* Office Action dated July 29, 2005, pg. 6). In making such a statement, the Examiner notes that a buyer can adjust the buyer's production schedule in accordance with required product. However, the Examiner fails to consider the production schedule as it relates to *the seller* as claimed. Lacking such a relationship between the seller and a production schedule, the subject claim is novel in light of the cited reference.

In view of at least the foregoing, it is readily apparent that Pallakoff fails to teach or suggest each and every element of the invention as set forth in independent claims 1 and 43 (as well as claims 2, 8-10, 15, 17-18, and 44-47 that depend thereon). Accordingly, this rejection should be withdrawn.

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CONCLUSION

The present application is believed to be in condition for allowance in view of the above comments and amendments. A prompt action to such end is earnestly solicited.

In the event any fees are due in connection with this document, the Commissioner is authorized to charge those fees to Deposit Account No. 50-1063 [GEDP101USE].

Should the Examiner believe a telephone interview would be helpful to expedite favorable prosecution, the Examiner is invited to contact applicant's undersigned representative at the telephone number below.

Respectfully submitted,

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